

FREEDOM OIL CO., INC.

IBLA 85-220 Decided May 28, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease ES-16067 (Miss.).

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Reinstatement
 -- Oil and Gas Leases: Termination

When the lessee fails to pay rental on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law pursuant to 30 U.S.C. § 188(b) (1982). The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. When the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore, a petition for reinstatement under 30 U.S.C. § 188(c) (1982) must be rejected.

APPEARANCES: Andrew C. Nolin, Jr., president, Richard W. Conner, vice president, Freedom Oil Company, Inc., Montgomery, Alabama, for appellant; Kenneth G. Lee, Esq., Assistant Solicitor, U.S. Department of the Interior, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Freedom Oil Company, Inc., appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated November 16, 1984, rejecting its petition for reinstatement of oil and gas lease ES-16067 (Miss.).

Oil and gas lease ES-16067 (Miss.) was issued to appellant's predecessor in title, effective June 1, 1976. The terms of the lease provide that the lease runs for a term of 10 years from the effective date. Paragraph 2(e) of the lease provides in pertinent part, that "[i]f there is no well on

the leased lands capable of producing oil or gas in paying quantities, the failure to pay rental on or before the anniversary date shall automatically terminate the lease by operation of law." Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when a lessee fails to pay rentals on or before the anniversary date of the lease, and where there is no well capable of producing oil or gas in paying quantities on the leased premises, the lease shall automatically terminate by operation of law.

The record discloses that the annual rental payment due on June 1, 1984, was paid by check dated June 12, 1984, and received by Minerals Management Service on June 18, 1984. On September 13, 1984, BLM notified appellant that its lease had terminated on June 1, 1984, because it had failed to timely pay the annual rental. BLM also informed appellant of its right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and 30 U.S.C. § 188(d), (e) (1982) (class II reinstatement). The lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ The lease termination notice outlined the reinstatement conditions as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence; and, (b) that a petition for reinstatement, together with the required rental and a \$25.00 filing fee, is filed in this office within 15 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of payment. If these conditions are met, your lease can be reinstated with the original lease terms and conditions, effective on the date of termination.

"If one or more of the above conditions are not met; your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

"II. Class II (30 U.S.C. 188(d) and (e); Sec. 401, 97-451)

"Your lease may be reinstated under these provisions if: (a) the rental is received in this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, if the rental is not received in this Office within 20 days after the anniversary date of the lease, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence; and (b) that a petition for reinstatement, together with the rental and royalty due from the date of termination payable at the new rates set out below, is filed in this office within 60 days after receipt of this Notice; and, (c) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

On October 12, 1984, appellant again tendered rental payment and filed a petition for reinstatement. In the petition for reinstatement, appellant states:

This letter is in response to your letter to us in reference to the above Oil and Gas Lease. We regret that this rental was inadvertently not paid due to many extenuating circumstances. We have just this date received your letter dated September 13, 1984. We did not receive any previous notice. In explanation, our Mississippi office was closed, and we moved all land records to our office in Montgomery, Alabama. Apparently our mail was not forwarded correctly. Please accept this reply as our earnest effort to rectify this oversight.

[1] The grant of a class I reinstatement is governed by 43 CFR 3108.2-2(a), which provides:

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which is terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It was shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(3) A petition for reinstatement, together with a nonrefundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental.

The applicable regulation, 43 CFR 3108.2-2(b), provides: "The burden of showing that the failure to pay on or before the anniversary date was

fn. 1 (continued)

"If these conditions are met and you wish to petition, the requirements for reinstatement under Class II are as follows:

- "1. You must submit a reinstatement processing fee of \$500.00; and
- "2. You must submit the new noncompetitive lease rental rate of \$5.00 per acre or fraction thereof per year and agree to the new royalty rate of 16 2/3 percent; and,
- "3. You will agree to pay the cost of publishing a Notice of Proposed Reinstatement in the Federal Register, for which you will be billed.

"If all these requirements are met, your lease can be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis in original.)

justified or not due to lack of reasonable diligence shall be on the lessee." E.g., Leo M. Krenzler, 82 IBLA 205, 207 (1984); Arthur F. Hovey, 79 IBLA 148, 149 (1984). If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2. E.g., Leo M. Krenzler, *supra*; Kay Fink, 81 IBLA 381, 382 (1984); Arthur M. Solender, 79 IBLA 70, 72 (1984).

In the statement of reasons for appeal, appellant notes:

Freedom Oil Co., Inc. received the Decision of the Department of the Interior in connection with the above lease on November 23, 1984. A copy of the claim check dated 11/23/84 is attached as Exhibit "A". We received this letter on 11/23/84; although your Decision was dated November 16, 1984. Copy of this Decision is attached as Exhibit "B". * * *

* * * * *

* * * As explained in our letter of October 11, we did not receive this Notice of Termination until October 11, 1984. Freedom Oil Co., Inc. closed its Mississippi office on September 7, 1984. Mr. Robert Fambrough, a geologist was picking up the mail and signed for your Notice. However, he did not forward the Notice to our Montgomery office until October 11, 1984. Therefore, we contend that this Notice was not filed on lessee on September 19, 1984.

According to Exhibit "D" [a copy of the Oil and Gas Termination Notice], the Decision, the Minerals Management Service received our original check for delay rentals on June 18, 1984. The due date was June 1, 1984. As earlier explained Freedom Oil Co., Inc., was in the process of closing down its Mississippi operations. At times, there was no one in the Mississippi office. The only person left to close out everything was a secretary. Therefore, we contend that due to packing up all office files, termination of employees, and other extenuating [sic] hardships, we remitted the delay rentals later than the June 1, 1984 due date. [2/] However, according to the Oil and Gas Termination Notice (Exhibit "D"), a lease may be reinstated if the payments are received with [sic] 20 days after the anniversary date of the lease and it is shown that the delay was justifiable.

2/ Effective Aug. 22, 1983, the regulations were revised to provide that the rental payment is "timely filed" where it is received within 20 days of the anniversary date and the remittance is postmarked on or before the anniversary date. 43 CFR 3108.2-1(a), 48 FR 33673 (July 22, 1983). However, this cannot avail appellant, as the remittance was transmitted after the anniversary date.

Appellant summarizes the reasons for appeal by stating that the lease should be reinstated because the payment was received within 20 days of due date and because the failure to remit payment on time was justified. ^{3/}

Counsel for BLM filed an answer on January 18, 1985. In its answer, BLM contends that appellant's lease was properly terminated by operation of law on June 1, 1984, for failure to pay rental and that appellant did not show proper justification for the tardiness of its rental payment. Relevant statutes and cases were cited in support of BLM's position.

When the failure to pay the anniversary rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Leo M. Krenzler, *supra* at 209; Eleanor L. M. Dubey, 76 IBLA 179 (1983). Although late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease, Leo M. Krenzler, *supra* at 207; William F. Branscome, 81 IBLA 235, 237 (1984), here the untimeliness was clearly within the control of appellant's agent. The stated reason for the failure to submit the rental in a timely manner was "due to extenuating hardships and circumstances involved with the moving and closing of our Mississippi office." The Board has previously found that disruptions caused by changing offices are not beyond the lessee's control. Crest Oil & Gas Corp., 72 IBLA 370 (1983); Mono Power Co., 28 IBLA 289 (1976). Thus, the circumstances alleged by appellant do not justify the late payment, nor has appellant shown that its failure was not due to a lack of reasonable diligence.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

^{3/} Although appellant does not specifically request reinstatement under class II reinstatement, the submissions necessary for a class II reinstatement have not been tendered, *i.e.*, a processing fee of \$500, the back rental at the increased rate, etc. Accordingly, the only reinstatement available to appellant is that for class I, and we, therefore, need not address the class II issue.

